

**Response to Comments
Draft Multi-Sector General Permit
Rhode Island Pollutant Discharge Elimination System
Storm Water Discharge Associated with Industrial Activity**

From September 16, 2005 to October 20, 2005, the Rhode Island Department of Environmental Management (DEM) solicited public comments on the draft Rhode Island Pollutant Discharge Elimination System (RIPDES) Multi-Sector General Permit for Storm Water Discharge Associated with Industrial Activity. As a result of the Public Comments received during the September 16, 2005 to October 20, 2005 comment period, changes to the Draft General Permit are being considered.

The following is a synopsis of the comments received and the DEM's responses to those comments. Written comments were received from PSC Industrial Services, the Rhode Island Marine Trade Association, Dominion Energy New England, Inc., John W. Furrh Associates, Inc., and the Conservation Law Foundation during the September 16, 2005 to October 20, 2005 comment period.

PSC Industrial Services

Comment(s) 1:

Section VI.K. Sector K- Hazardous Water Treatment, Storage or Disposal Facilities

"The parameters listed in Table K-1 under "HZ" for non-landfill facilities do not match the parameters listed in Table 3 of the Appendix. Specifically, silver is not listed in Table K-1 but is listed in Table 3. If silver is to be monitored, Table K-1 must be edited to include silver and an associated benchmark monitoring cutoff concentration."

Response 1:

Table K-1 was changed to include monitoring for Silver, the benchmark concentration for Total Recoverable Silver is 0.0318 mg/L. In addition, the Silver benchmark listed in Table G-2 of Sector G was corrected, the previous value of 0.318 mg/L was replaced with 0.0318 mg/L.

Rhode Island Marine Trade Association

Comment(s) 2:

"It is requested that the draft regulations be modified to separate the Ship Building and Repairing (SIC 3731) from Boat Building and Repairing (SIC 3732). The industrial activities of Ship Building and Repairing are substantially different from Boat Building and Repairing resulting in a dramatically different potential storm water impact. The difference in the potential impacts to storm water discharges suggest that moving Boat Building and Repairing (SIC 3732) from Sector R to Sector Q in the regulations. This would seem more appropriate, in that several boat building/repairing facilities are located in or adjacent to Marinas."

Response 2:

The Environmental Protection Agency 1995 MSGP's preamble explained that "special conditions were developed for both boat and ship building and repairing operations based on common operations. Common activities at ship and boat yards include: vessel and equipment cleaning fluid changes, mechanical repairs, parts cleaning, sanding, blasting, welding refinishing, painting, fueling, and storage of the related materials and waste material such as oil, fuel, batteries or oil filters." A list of common pollutant sources to these two types of facilities, which included the following, were also listed in the 1995 preamble: wash water; sanding, mechanical grinding, abrasive blasting, paint stripping; paint and paint thinner spills, spray painting, paint stripping, sanding, paint cleanup; parts cleaning, waste disposal of greasy rags, used fluids and batteries, use of cleaners and degreasers, fluid spills, fluid replacement; fueling spills, leaks and hosing areas; liquid storage in above ground storage, spills and overfills, external corrosion, failure of piping system; waste material storage and disposal; and process and cooling water, sanitary waste, bilge and ballast waters. Furthermore, the preamble lists the same pollutants, pollutant sources and potential Best Management Practices for facilities classified under water transportation vehicle maintenance and equipment cleaning operations (Sector Q) and facilities under Sector R, resulting in Storm Water Pollution Prevention Plan requirements, for both Sectors Q and R, that are basically the same. The only additional requirement for facilities within the water transportation sector Q is the benchmark monitoring of Aluminum, Iron, Lead and Zinc.

Dominion Energy New England, Inc.

Comment(s) 3:

Since the General Permit was not reissued in a timely manner, RIDEM has proposed a deadline for permittees to submit a Notice of Intent (NOI) within thirty (30) days of the effective date of the new NMSGOP in order to maintain coverage. The Federal Multi-Sector General Permit requires permittees to submit a NOI within ninety (90) days of the effective date of the 2000 MSGP in order to maintain coverage.

"Section II. of the draft proposed MSGP, requires facilities subject to the new RIPDES Storm Water MSGP to modify their Storm Water Pollution Prevention Plan (SWPPP) within thirty (30) days of the effective date of the new MSGP, prior to submittal of the NOI, in order to maintain compliance with and maintain coverage under the MSGP terms and conditions. DMS personnel have reviewed the scope of the changes required for appropriate conformance with the new requirements of the proposed MSGP and have determined that approximately three computer aided design (CAD) drawing s will need extensive modifications. These modifications are needed for both the proposed modifications to the MSGP and the RIDOT project to relocate interstate 195 (I-195). As you are most likely aware, this project now bisects the property, with an easement for access between the northern half and southern half of the DMS property.

Response 3:

RIDEM's requirements to submit an application and make the amendments necessary for the Storm Water Pollution Prevention Plan to be consistent with the requirements of the new RI MSGP, within thirty (30) days of the effective date of the permit, are consistent with the requirements of the previous RIPDES general permit for storm water discharges associated with industrial activity. In addition, all the requirements of the RI MSGP have been available to the

public for a period that significantly exceeds the above referenced ninety (90) days that the EPA's MSGP requires. The RI MSGP's new requirements for the SWPPP have been available since September 16, 2005. In accordance with Rule 46(b), the General Permit will become effective thirty (30) days after the DEM makes a final permit decision, permittees must have amended their SWPPPs and submit a completed NOI to the Department within thirty (30) days of the effective date of the permit. The Department disagrees that amending the SWPPP within the above mentioned timeframe, to meet the requirements of the RI MSGP, constitutes a significant burden.

Dominion

Comment(s) 4:

DMS feels that it is necessary to have consultations with RIDEM to ensure that the sampling locations of the co-mingled outfalls are appropriate and representative of DMS's discharge and the new naming of the outfalls is acceptable to RIDEM

Finally, the NOI requirements of Section III.I of the draft proposed MGSP reads:

Documentation of Permit Eligibility Related to Endangered Species. The permittee must identify in the SWPPP if the facility is located within or discharges to a critical habitat of a listed or proposed to be listed endangered or threatened species (this information can be found on RIDEM's website under Maps, Community Planning Maps, Natural Heritage Areas). If the Department makes a determination that the discharge may adversely affect a critical habitat of a listed or proposed to be listed endangered or threatened species, the discharge cannot be authorized under this permit and the permittee must submit an application for an individual RIPDES permit that would require appropriate storm water controls or the permittee must eliminate the discharge.

DMS also has not had an appropriate opportunity to review and comments on the proposed new NOI or the amended critical habitat list mentioned by RIDEM on the evening of October 11th, 2005, which was posted for public comment only a few days prior to October 20, 2005. DMS would like to be able to confirm that new NOI is consistent with the information required by Section III.A. of the proposed draft MSGP. As a matter of appropriate public process, the NOI should also have a 30-day comment period from the date it is public noticed.

Response(s) 4:

Benchmark monitoring is not required until the second year of the permit. If Dominion determines it is necessary for facility representatives to sit down with RIPDES staff to ensure that the Department agrees with the sampling locations and naming of the outfalls, Dominion can set up a meeting during the first year of the permit.

Although, Part III.A of the permit has no reference to Natural Heritage Areas, in accordance to Part IV.I of the permit, the permittee must identify in the SWPPP if the facility is located within or discharges to a critical habitat of a listed or proposed to be listed endangered or threatened species. This information can be found in RIDEM's website, and it does not require any coordination or consultation between RIDEM and the permittee. This determination of location or discharge to a Natural Heritage Area was part of the information public noticed and posted in RIDEM's website since September 16, 2005. Furthermore, Part II.A.12 requires the preparation

of a SWPPP in accordance to the requirements of the MSGP, as part of the NOI. If during the preparation of the SWPPP the permittee determines that the facility is located within or discharges to a critical habitat of a listed or proposed to be listed endangered or threatened species the permittee will simply check the yes box in Part V of the NOI.

Conservation Law Foundation

Comment(s) 5:

I. GREATER PUBLIC ACCESS TO PERMIT INFORMATION

Congress identified public participation rights as a critical means of advancing the goals of the Clean Water Act in its primary statement of the Act's approach and philosophy. See 33 U.S.C. § 1251(e); see also Costle v. Pacific Legal Found., 445 U.S. 198, 216, 100 S.Ct. 1095, 63 L.Ed.2d 329 (1980) (noting the "general policy of encouraging public participation is applicable to the administration of the NPDES permit program"). EPA has acknowledged that technical issues relating to the issuance of NPDES permits should be decided in "the most open, accessible forum possible, and at a stage where the permitting authority has the greatest flexibility to make appropriate modifications to the permit." 44 Fed. Reg. 32,854, 32,885 (June 7, 1979). In order for the public to participate, permitting information must be accessible.

A. Public Access to SWPPP

An overarching concern of CLF is the public's ability to access information regarding the adequacy of a SWPPP and facility compliance with the MSGP. The MSGP should require facilities to make the SWPPP available not just for inspection but also provide means of copying (either at no fee or specify a set fee for copying). One way to increase the public's access is to make the SWPPP available in electronic format. If not, hard copies can be scanned into a pdf for a nominal fee.

Another means to improve accessibility is to require all facilities to submit a SWPPP to DEM in electronic format. This would reduce DEM's filing burdens associated with paper copies, and increase access for the public.

Response 5:

The Department agrees that the public must have access to the SWPPPs. All SWPPPs received by the Department are part of the public record and are available for review upon the public's request. In addition, Part IV.B of the MSGP has been changed to incorporate the public's ability to request in writing a copy of the SWPPP from the facility's owner/operator. Part IV.B of the permit was changed as follows:

IV. STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

* * *

- B. The Plan shall be signed by the owner and operator in accordance with Part VII.G. of this permit and retained on-site. Owners or operators of a facility with storm water discharges covered by this permit shall make plans available upon request to the Director, to any member of the public who makes such a request in writing, or in the case of a storm water discharge associated with industrial activity, which discharges through a municipal separate storm sewer system with a RIPDES storm water permit, to the wastewater authority having jurisdiction for the sewerage system.*

In addition the Department will also encourage permittees as an alternative to post electronic copies of their NOIs and SWPPPs in the company's website.

Conservation Law Foundation

Comment(s) 6:

B. Public Access to DMR and Annual Reports

Part II.C.1 of the MSGP requires facilities to submit monitoring results to DEM. Presumably, the public could access this information via a file review request at DEM. To facilitate greater public access to this information, the MSGP could encourage facilities to provide this information to the public (similar to the provision in Part IV.N.2.) in electronic format. Another means would be to require facilities to submit monitoring to DEM in electronic form. Again, this would be advantageous to DEM for filing purposes, and provides an additional and easier means for the public to access this information.

Response 6:

The Department will try to expedite the input of DMRs information into the RIPDES database. Reports can then be generated and provided upon request after the Annual submission of this information.

Conservation Law Foundation

Comment(s) 7:

C. Public Access to NOI

Similar to the recommendations for SWPPP and monitoring and reporting submissions discussed above, the MSGP should provide a means for public access to NOIs, either by using a searchable online database similar to EPA, or by requiring each facility to post a public electronic copy (pdf) of their NOI on the internet.

Response 7:

The Department will post a list of applications received in RIDEM's RIPDES website.

Conservation Law Foundation

Comment(s) 8:

II. ALL FACILITIES SHOULD SUBMIT SWPPPs TO DEM FOR REVIEW

The adequacy of the SWPPPs can only be assured if they are reviewed by DEM and/or the public.

Pursuant to Part I.C.2, by submitting an NOI, the draft MSGP essentially provides automatic renewals for facilities that had coverage under the 2003 General Permit or were part of the group application process. This provision is problematic for two reasons:

1. Under the EPA group application process, group applicants were not required to develop a SWPPP. Therefore, these facilities¹ are drafting their first SWPPP, yet under the draft MSGP, these facilities are not required to submit their SWPPPs and therefore will not be reviewed by DEM. However, the draft MSGP properly requires SWPPP submittals for those facilities seeking coverage for the first time (see Part III.11.b), and thus submitting their first SWPPP. At a minimum, initial SWPPPs should be submitted to DEM allowing for review by DEM and the public.
2. Pursuant to Part II.A., the MSGP suggests that SWPPPs developed under the 2003 General Permit “may” satisfy the conditions of the draft MSGP. The rationale for automatic renewals for these facilities is concerning. The draft MSGP imposes significant changes in SWPPP compliance, e.g., benchmark effluent limits, monitoring and reporting requirements, specific BMPs, etc... Because these facilities comprise the majority of discharges subject to the Phase I program, ensuring the adequacy of these SWPPPs is essential for the program’s success. At a minimum, DEM should require SWPPP submittals, directing facilities to update their SWPPP with the new MSGP conditions in mind.

CLF is mindful of DEM’s resource constraints, and realizes that a thorough review of all SWPPPs may be difficult and time consuming. One way to review SWPPPs is to establish a tiered review process with an implementation schedule for such reviews.

Tier 1: All SWPPPs receive a review for administrative completeness; i.e., are the essential elements of the SWPPP provided.

Tier 2: SWPPPs covered by the 2003 General Permit are reviewed with an eye towards changes related to the MSGP.

Tier 3: Selected EPA group applicant SWPPPs receive a thorough review; e.g., facilities that are or may reasonably be expected to be contributing to a violation of water quality standards or is a significant contributor of pollutants

Tier 4: First time SWPPPs could receive a thorough review.

Response 8:

In accordance to Part II.A of the MSGP the development of a SWPPP that meets the requirements of the MSGP is required prior to the submission of the NOI for all facilities. Facilities that were authorized under the group application process or the previous 2003 general permit are existing facilities and the Department has minimal opportunity to comment on better site design and selection of BMPs. Outside of the world of new facilities that will submit SWPPPs for the Department’s review and approval, the Department will target facilities that discharge into impaired waters and in particular facilities that because of the exposure of materials and activities are known to have the potential to discharge the pollutant(s) that are causing the impairment.

Conservation Law Foundation

Comment(s) :

III. DOCUMENTATION OF PERMIT ELIGIBILITY

Pursuant to the MSGP, the facility is required to determine its permit eligibility, therefore it makes sense for permittee to provide this information, both as means of assuring that they actually checked it, and so the public and DEM don't have to redo the work they already did. Therefore, it is imperative that facilities provide documentation of permit compliance regarding unauthorized discharges.

Facilities are not required to document eligibility related to contributions to water quality standard violations or consistency with TMDLs.

Since facilities would have already investigated and determined whether their discharges are in compliance with the MSGP, requiring facilities to document permit eligibility (in the same manner as prescribed in Part IV.1) is not an added requirement¹. The following issues should be added to the MSGP:

A. Documentation of Permit Eligibility Related to Impaired Water

Suggested Permit Language

The permittee shall identify in the SWPPP if its storm water discharges to a water body listed as impaired in the 303(d) list (this information can be found on RIDEM's web site under Publications/Regulations, Water Quality, List of Impaired Waterbodies). The permittee should determine if its storm water discharge is or may reasonably be expected to release those pollutants listed as causing the impairment. If the Department or the permittee makes a determination that the discharge is or may reasonably be expected to be contributing to a violation of water quality standards or is a significant contributor of pollutants, the discharge cannot be authorized under this permit and the permittee must submit an application for an individual RIPDES permit that would require appropriate storm water controls or the permittee must eliminate the discharge.

B. Documentation of Permit Eligibility Related to TMDL

Suggested Permit Language:

The permittee must identify in the SWPPP if its storm water discharges to a water body that has an approved TMDL, and that its discharges are consistent with enforceable "waste load allocations" established in the TMDL. (This information can be found on RIDEM's web site under Programs, Water Resources, Water Quality, Restoration Studies, Documents, Final TMDLS).

Response 9:

Under the MSGP facilities do not make the determination of permit eligibility if the facility is located within or discharges to a critical habitat of a listed or proposed to be listed endangered or threatened species or the facility discharges into any water for which a Total Maximum Daily Load (TMDL) has been either established or approved by the EPA, the information necessary for the Department to make such determination is required as a submission in the NOI.

The determination as to whether the facility is eligible for authorization of the storm water discharges under the MSGP will be made by the Department after the NOI is received. The NOI requires permittees to identify the water body that receives the storm water discharges from a facility. The Department intends to input this information into databases that can be used to run reports and prioritize reviews based on whether pollutant(s) of concern are expected to be present in the storm water discharges from a particular facility. Furthermore, until the Department has guidance for a permittee to make a permit eligibility determination based on their storm water discharges to impaired waters the Department has determined it is not appropriate to include such requirement in the permit.

Conservation Law Foundation

Comment(s) 10:

IV. BENCHMARK EFFLUENT LIMIT EXCEEDANCES

The goal of the CWA is reducing and eliminating pollution to receiving waters. The heart of the Phase I stormwater pollution program is the SWPPP; it represents a facility's step-by-step method to prevent pollution from entering waters. The primary way to assess the effectiveness of the SWPPP is through effluent monitoring. EPA developed benchmark effluent limits based upon years of industry specific monitoring, using increasingly innovative BMPs; in sum, benchmark limits reflect the ability of similar situated facilities' to meet those limits. As reflected in Parts III.D. and V.A.2 of the draft MSGP, if benchmark effluent limits are not being met, the SWPPP is not achieving the objective of controlling stormwater discharges, and it does signal that modifications to the SWPPP may be necessary.

In the event that benchmark effluent limits are not achieved, the MSGP should require the facility to determine/assess why benchmarks limits have not been met, what changes to the SWPPP are necessary to achieve those limits, and a timeframe (e.g., 30 days) in which to complete the assessment and/or amendments. Without this requirement, facilities may not take the initiative to improve/enhance their SWPPP.

Response 10:

Part IV.L of the MSGP describes the requirements for the Annual Comprehensive Site Evaluation. As part of this evaluation "Results of both visual and analytical monitoring done during the year must be taken into consideration during the evaluation". The permittee must complete revisions to the SWPPP within 14 calendar days following the inspection. "If existing BMPs need to be modified or if additional BMPs are necessary, implementation must be completed before the next anticipated storm event, if practicable, but not more than twelve (12) weeks after completion of the comprehensive site evaluation".

In addition, language in the permit was added as follows to clarify what is required from the permittee if benchmarks are exceeded:

L. Comprehensive Site Compliance Evaluation

3. Follow-up Actions

Based on the results of the inspection, the permittee must modify the SWPPP as necessary (e.g., show additional controls on map required by Part IV.F.2.c; revise description of controls required by Part IV.F.7 to include additional or modified BMPs designed to correct problems identified. If the average value(s) for the Benchmark Monitoring results for one year exceeds the benchmark monitoring cutoff concentrations listed in Tables A-1 through AA-1, the compliance evaluation report must include an explanation of why benchmarks have been exceeded and a description of the actions necessary to achieve the benchmark monitoring cut-off concentrations.

The permittee must complete revisions to the SWPPP within 14 calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation must be completed before the next anticipated storm event, if practicable, but not more than twelve (12) weeks after completion of the comprehensive site evaluation

4. Compliance Evaluation Report

The permittee must insure a report summarizing the scope of the inspection, name(s) of personnel making the inspection, the date(s) of the inspection, and major observations relating to the implementation of the SWPPP is completed no more than twelve (12) weeks after the date of the inspection and retained as part of the SWPPP for at least five (5) years from the date of the report. Major observations should include: the location(s) of discharges of pollutants from the site; location(s) of BMPs that need to be maintained; location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location; and location(s) where additional BMPs are needed that did not exist at the time of inspection. The permittee must retain a record of actions taken in accordance with Part IV.L of this permit as part of the Storm Water Pollution Prevention Plan for at least five (5) years from the date of the inspection report. The inspection reports must identify any incidents of non-compliance. Where an inspection report does not identify any incidents of non-compliance, the report must contain a certification that the facility is in compliance with the Storm Water Pollution Prevention Plan and this permit. Both the inspection report and any reports of follow-up actions must be signed in accordance with Part VII.G (reporting) of this permit.

Conservation Law Foundation

Comment(s) 11:

V. ALTERNATE SAMPLING OF IDENTICAL OUTFALLS

Part V.B.4, "Representative Outfalls - Essential Identical Discharges," allows facilities to test the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). To ensure that the outfalls are indeed substantially identical,

the MSGP should require the discharger to alternate outfalls sampled during each monitoring period.

Response 11:

The permit language was changed as follows to clarify when permittees need to re-assess previous determinations of identical outfalls.

V. MONITORING REQUIREMENTS AND NUMERIC LIMITATIONS

* * *

B. Monitoring Instructions

4 Representative Outfalls - Essentially Identical Discharges.

If the facility has two (2) or more outfalls that the permittee believes discharge substantially identical effluents, based on similarities of the industrial activities, significant materials or storm water management practices occurring within the outfalls' drainage areas, the permittee may test the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). For this to be permissible, the permittee must describe in the Storm Water Pollution Prevention Plan and include in the Discharge Monitoring Report the following: locations of the outfalls; why the outfalls are expected to discharge substantially identical effluents; estimates of the size of the drainage area (in square feet) for each of the outfalls; and an estimate of the runoff coefficient of the drainage areas (low: under 40 percent; medium: 40 to 65 percent; high: above 65 percent). Outfalls previously determined to discharge substantially identical effluents must be re-evaluated as part of the compliance evaluation report to determine if the industrial activities, significant materials or storm water management practices occurring within the outfalls' drainage areas have changed

Conservation Law Foundation

Comment(s) 12:

VI. PROVIDE PUBLIC NOTICE AND COMMENT OF NOI AND SWPPP

As discussed above, public participation is the cornerstone of the CWA success. EPA has acknowledged that technical issues relating to the issuance of NPDES permits should be decided in "the most open, accessible forum possible, and at a stage where the permitting authority has the greatest flexibility to make appropriate modifications to the permit." The draft MSGP does not provide a meaningful opportunity for the public to review and comment on an NOI or SWPPP before authorization to discharge is granted. As stated in EDC v. EPA, 344 F.3d 832, 856 (9th Circuit, 2003), "...that clear Congressional intent requires that NOIs be subject to the Clean Water Act's public availability and public hearings requirements. The Clean Water Act requires that "[a] copy of each permit application and each permit issued under [the NPDES permitting program] shall be available to the public," 33 U.S.C. § 1342(j), and that the public shall have an opportunity for a hearing before an permit application is approved, 33 U.S.C. § 1342(a)(1).

As a practical matter, it is the NOIs and SWPPPs, and not the MSGP, that contain the substantive information about how the operator of a facility will comply with the terms of the MSGP and reduce stormwater discharges. Under the draft MSGP, NOIs and SWPPPs are functionally equivalent to the permit applications Congress envisioned when it created the Clean Water Act's public availability and public hearing requirements. Thus, if the MSGP does not make NOIs and SWPPPs "available to the public," and does not provide for public comment, the MSGP misses an opportunity to obtain valuable input and improve the quality of state waters.

One way to expedite the notice and comment period, and reduce the cost of notice for DEM is to follow the process applied in Vermont. DEM could send notice via email to individuals who make a request in writing, and limit the comment period to 10 days.

Response 12:

DEM is aware that the Ninth Circuit remanded certain aspects of the Small MS4 General Permit. The Ninth circuit court decision states that "As noted above, under the Phase II Rule, it is the NOIs and not the general permits, that contain information about how the operator of a small MS4 will reduce discharges to the maximum extent practicable." Please note that this is significantly different from the requirements of the MSGP, the conditions of this permit have been designed to comply with the technology-based standards of the CWA (BAT/BCT). Based on a consideration of the appropriate factors for BAT and BCT requirements and a consideration of factors and options discussed in EPA's 1995 MSGP preamble for controlling pollutants in storm water discharges associated with industrial activity, the MSGP lists a set of tailored requirements for developing and implementing storm water pollution prevention plans, and for selected discharges, effluent limitations. Therefore, information about how the operator of an industrial facility will reduce the discharge of pollutants from a facility is included in the MSGP which was public noticed September 16, 2005.

In addition, DEM will place a list of received NOIs on the RIDEM/RIPDES website. The reviewer may notify DEM of any conditions that the reviewer feels are not being met by the applicant upon review of the NOI and SWPPP. DEM has the authority under Part III.C of the permit to revoke permit coverage under the general permit and required coverage under an individual permit if the SWPPP is not modified to comply with the permit.

Conservation Law Foundation

Comment(s) 13:

VII. CLARIFY DEFINITIONS IN FACT SHEET AND PREFACE

The jurisdictional requirement and definition of a "point source" is a provision of federal law, see 33 U.S.C. §§ 1311, 1362(14). While the Fact Sheet and MSGP Preface reference the definition of a "point source" as defined in RIPDES Rule 3, it would be helpful to provide the federal definition and/or the RIPDES definition within the MSGP to avoid confusion by industrial operators who may be unaware of the broad interpretation of what is a point source.

The reliance on the term "directly" in the phrase "which discharges directly to a surface water body, wetland or separate storm sewer system" may confuse or mislead some operators as to their need to obtain a permit. Again, the definition of discharge is a federal jurisdictional requirement and federal statutes and case law are controlling and are far broader. See 33 U.S.C. § 1362(12) (any addition of any pollutant to navigable waters from any point source). We

recommend using the federal citations and expanded definitions in both the MSGP and Fact Sheet.

Response 13:

These terms were first developed by the National Pollutant Discharge Elimination System (NPDES) Program and were adopted by RIDEM/RIPDES Program to keep consistency within the Programs, please refer to 40CFR Subpart A §122.2. The terms as described in Rule 3 of the RIPDES Regulations differentiate between discharges that will be introduced into a conveyance that discharges into an MS4 or waters of the State directly ("direct discharges") and discharges that are introduced into a Publicly Owned Treatment Works (POTW) from any non-domestic source regulated under 307(b), (c) or (d) of the Clean Water Act (indirect discharges). This is explained in the MSGP Preface "discharges directly to a surface water body and/or a municipal separate storm sewer system. The preface and the Fact Sheet for the MSGP were changed to include the definition of a point source under RIPDES. The preface now reads:

To require coverage under this permit, two conditions must be met. The first is that the facility must meet at least one of the conditions in the definition of "storm water discharge associated with industrial activity" (see RIPDES Rule 31.b.15.). The second is that the discharge of storm water associated with industrial activity must be a point source (see RIPDES Rule 3 for the definition of a point source), which discharges directly to a surface water body and/or a municipal separate storm sewer system. If both of these conditions are met, then the facility needs to seek coverage under this permit or an individual or alternative general permit. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Notice of Intent Comments

JOHN W. FURRH ASSOCIATES INC.

Comment(s) 14:

In the first block you are to mark a box. There seems to be no place for a company that had not previously applied, but been in business earlier than 3/19/04. Should that company leave that section blank? Or should there be another box added for that situation?

Response 14:

The *New Facility (discharge after 03/19/04)* box was changed to *New Permittee (after 03/19/04)*. Facilities that were not previously permitted under the group application or were not authorized under the previous RIPDES General Permit for storm water discharge associated with industrial activity must check this box.

JOHN W. FURRH ASSOCIATES INC.

Comment(s) 15:

Regarding Section IV: Previously when downloading the existing NOI and now with this new NOI it states that the RI Watershed listing and their codes are included. Neither time have they been. Also when looking in other places on DEM's site you can find them but it is hard to distinguish if it is showing you a numbered list of the watersheds, but you're not sure if the numbers are the codes

Response 15:

The RI Watershed listing and the corresponding codes can be found at:

<http://www.dem.ri.gov/programs/benviron/water/permits/ripdes/stwater/graphics/watersh.jpg>

A link to this website is now provided in the NOI instructions. In addition, a copy of this map has been attached to the NOI.

JOHN W. FURRH ASSOCIATES INC.

Comment(s) 16:

Section VIII states that the NOI and any attached documents are to be given to the MS4 Operator. Am I understanding correctly that you are to give it to your Municipality? And if so, are they all aware that they will be receiving these from individual companies? Will they have someone reviewing them?

Response 16:

*The language and **any attached documents** has been eliminated from the NOI form. The intent of this requirement is to facilitate the process of coordination between the Department and regulated Municipal Separate Storm Sewer Systems (MS4s). Regulated MS4s are required under Part IV.B.4.b.6 of the General Permit for Storm Water Discharge from Small MS4s to refer to the Department new discharges of storm water associated with industrial activity. In addition, regulated municipalities are required to prioritize areas of the municipality for the detection and elimination of illicit discharges, knowing where storm water discharges associated with industrial activity are located and/or concentrated can help them in determining the source of the illicit discharge. A list of storm water coordinators for MS4s in the State will be posted in the Departments website at:*

<http://www.dem.ri.gov/programs/benviron/water/permits/ripdes/stwater/index.htm>

JOHN W. FURRH ASSOCIATES INC.

Comment(s) 17:

Section IX SWPPP Dev. Certification. Is that only signed if there was a previous SWPPP in place? They are suppose to have an SWPPP in place prior to submitting this NOI, but it doesn't request them to sign verifying that on the NOI. And the NOI doesn't tell them to include it.

Response 17:

Since facilities accepted as part of the group application process and facilities that were authorized under the 2003 General Permit for Storm Water Discharge Associated with industrial Activity are not required to submit a SWPPP to the Department as part of their application package, the purpose of this section is to certify that a SWPPP has been prepared or updated consistent with the requirements of the MSGP prior to the submission of the NOI. All other facilities will be required to submit a copy of their SWPPP (language in the NOI was added to this Section to clarify what is required from this last group).

JOHN W. FURRH ASSOCIATES INC.

Comment(s) 18:

Should there be something on the NOI that refers them back to the fee schedule and another cover sheet /explanation type form?

For those who haven't previously filed and need to send in Plan also. I remember seeing something like this before.

Response 18:

A fee schedule form has been attached to the application package. Instructions for the fee form have been added to the NOI instructions.

**SUMMARY OF CHANGES TO:
Multi-Sector General Permit
Rhode Island Pollutant Discharge Elimination System
Storm Water Discharge Associated with Industrial Activity**

From September 16, 2005 to October 20, 2005, the Rhode Island Department of Environmental Management (RIDEM) accepted comments, on the Draft Rhode Island Multi-Sector General Permit (MSGP) for Storm Water Discharge Associated with Industrial Activity. Based upon public comments submitted to RIDEM, the following changes to the draft general permit were made after October 20, 2005, please note that the changes have been highlighted:

Change 1:

The preface in the MSGP was changed as follows:

PLEASE READ THIS PERMIT CAREFULLY!

To require coverage under this permit, two conditions must be met. The first is that the facility must meet at least one of the conditions in the definition of "storm water discharge associated with industrial activity" (see RIPDES Rule 31.b.15.). The second is that the discharge of storm water associated with industrial activity must be a point source (see RIPDES Rule 3 for the definition of a point source), which discharges directly to a surface water body and/or a municipal separate storm sewer system. If both of these conditions are met, then the facility needs to seek coverage under this permit or an individual or alternative general permit. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Change 2:

Table K-1 was changed to include monitoring for Silver, the benchmark concentration for Total Recoverable Silver is 0.0318 mg/L.

Change 3:

IV. STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

* * *

- B. *The Plan shall be signed by the owner and operator in accordance with Part VII.G. of this permit and retained on-site. Owners or operators of a facility with storm water discharges covered by this permit shall make plans available upon request to the Director, to any member of the public who makes such a request in writing, or in the case of a storm water discharge associated with industrial activity, which discharges through a municipal separate storm sewer system with a RIPDES storm water permit, to the wastewater authority having jurisdiction for the sewerage system.*

Change 4:

IV. STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

* * *

L. Comprehensive Site Compliance Evaluation

3. Follow-up Actions

Based on the results of the inspection, the permittee must modify the SWPPP as necessary (e.g., show additional controls on map required by Part IV.F.2.c; revise description of controls required by Part IV.F.7 to include additional or modified BMPs designed to correct problems identified. If the average value(s) for the Benchmark Monitoring results for one year exceeds the benchmark monitoring cutoff concentrations listed in Tables A-1 through AA-1, the compliance evaluation report must include an explanation of why benchmarks have been exceeded and a description of the actions necessary to achieve the benchmark monitoring cut-off concentrations.

Change 5:

IV. MONITORING REQUIREMENTS AND NUMERIC LIMITATIONS

* * *

B. Monitoring Instructions

* * *

4 Representative Outfalls - Essentially Identical Discharges.

If the facility has two (2) or more outfalls that the permittee believes discharge substantially identical effluents, based on similarities of the industrial activities, significant materials or storm water management practices occurring within the outfalls' drainage areas, the permittee may test the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). For this to be permissible, the permittee must describe in the Storm Water Pollution Prevention Plan and include in the Discharge Monitoring Report the following: locations of the outfalls; why the outfalls are expected to discharge substantially identical effluents; estimates of the size of the drainage area (in square feet) for each of the outfalls; and an estimate of the runoff coefficient of the drainage areas (low: under 40 percent; medium: 40 to 65 percent; high: above 65 percent). Outfalls previously determined to discharge substantially identical effluents must be evaluated as part of the compliance evaluation report to determine if the industrial activities, significant materials or storm water management practices occurring within the outfalls' drainage areas have changed.